

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**CYRIL M. LOGAR,
R. STEPHEN SEARS,**

Plaintiffs,

Civil Action No.: 1:10-cv-201

**WEST VIRGINIA UNIVESITY BOARD
OF GOVERNORS, including members from
2008 through the present, a West Virginia state
Board; MARY ROBERTA BRANDT, individually
and as former Vice President for
Legal Affairs and General Counsel at West
Virginia University and adjunct professor of law;
BEVERLY D. KERR, individually and as Deputy
General Counsel for West Virginia University;
MARJORIE A. MCDIARMID, individually and
as the Steptoe and Johnson Professor of Law and
Technology and Academic Integrity Officer for West
Virginia University; MICHAEL S. GARRISON,
Individually and as former President of West Virginia
University; C. PETER MAGRATH, individually and
as former interim President of West Virginia University;
JAMES P. CLEMENTS, individually and as current
President of West Virginia University; and E. JANE
MARTIN, individually and as former Provost of West
Virginia University,**

Defendants.

**MOTION TO STAY DISCOVERY PENDING RESOLUTION OF DISPOSITIVE
MOTIONS BY DEFENDANTS WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, C. PETER MAGRATH, JAMES P. CLEMENTS, and E. JANE
MARTIN**

COME NOW the Defendants, West Virginia University Board of Governors (“WVUBOG”), C. Peter Magrath, James P. Clements, and E. Jane Martin, by and through their counsel, Stephen M. LaCagnin, Esquire, Wendy G. Adkins, Esquire, and Seth P. Hayes, Esquire, of Jackson Kelly PLLC, and move this Court to stay discovery as to all parties until the pending dispositive motions have been resolved. In support of their request, the Defendants state as follows:

1. Five motions to dismiss, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, have been filed in this matter. Doc. Nos. 25, 26, 31, 33, 55.
2. Written discovery has been served by Plaintiffs R. Stephen Sears and Cyril R. Logar on all defendants. Defendants WVUBOG, Magrath, Clements, and Martin have also served written discovery requests on Plaintiffs. The parties are currently negotiating significant discovery issues including, but not limited to, confidentiality provided by the Family Educational Rights and Privacy Act (“FERPA”) to current and former students of West Virginia University (“WVU”) and confidentiality owed by WVU’s Academic Integrity Policy to complainants, respondents, and other affected individuals who are involved in the Academic Integrity proceedings (who are not parties to this action). Plaintiffs also seek information concerning communications within WVU. WVU employs over 8,000 individuals, including faculty, staff, and graduate assistants. WVU has approximately 13 colleges and numerous administrative offices which support those colleges and the University as a whole. Thus, a search must be conducted in numerous locations for potentially responsive information in both paper and electronic form. Accordingly, e-discovery has also become a significant issue in this matter.

3. On July 28, 2011, the parties were notified that this Court is considering converting the pending Rule 12(b)(6) motions to dismiss into motions for summary judgment under Rule 56 as to the issue of the statute of limitations. Doc. No. 108. The parties were directed to submit affidavits concerning the date on which Plaintiffs received the Screening Subcommittee Report and the date on which the plaintiffs received the Discovery Subcommittee Report draft as well as any other pertinent material on the issue of the statute of limitations. Id. The parties must submit this information by no later than August 10, 2011.

4. It is well settled law that this court has the inherent authority to control the discovery proceedings in the instant action, which includes the authority to stay the discovery proceedings pending the resolution of dispositive motions or issues under Rule 26(c) of the Federal Rules of Civil Procedure. See e.g., Thigpen v. United States, 800 F.2d 393, 396-97 (4th Cir.1986) (“Nor did the court err by granting the government's motion under Fed.R.Civ.P. 26(c) to stay discovery pending disposition of the 12(b)(1) motion Trial courts ... are given wide discretion to control this discovery process....”); Petrus v. Bowen, 833 F.2d 581, 583 (5th Cir. 1987) (“trial court has broad discretion and inherent power to stay discovery until preliminary questions that may dispose of the case are determined”); Dababnah v. West Virginia Bd. of Medicine, 57 F.Supp.2d 355 (S.D.W.Va. 1999) (staying the discovery proceedings pending the outcome of interlocutory appeal which dealt the subject matter jurisdiction of the district court); Hachette Distribution, Inc. v. Hudson County News Co., Inc., 136 F.R.D. 356 (E.D.N.Y.

1991) (noting that federal district courts have discretion to impose a stay of discovery by issuing a protective order pending the determination of dispositive motions).

5. A temporary stay of discovery until the Court has ruled on the pending dispositive motions, particularly with respect to the statute of limitations issue identified by the Court in its notice, would allow the parties to focus on gathering the information recently sought by the Court. As the statute of limitations issue could be dispositive of the entire matter, a temporary stay of discovery may also prevent the unnecessary production of confidential information, such as student information protected by FERPA, and the parties from incurring the substantial costs of e-discovery.

For these reasons, Defendants WVUBOG, Magrath, Clements, and Martin seek a stay discovery as to all parties until the pending dispositive motions have been resolved.

Respectfully Submitted,

**WEST VIRGINIA UNIVERSITY BOARD
OF GOVERNORS, C. PETER MAGRATH,
JAMES P. CLEMENT, and E. JANE
MARTIN,**

By Counsel.

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President of West Virginia University; and E. JANE
MARTIN, individually and as former Provost of West
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Defendants.

CERTIFICATE OF SERVICE

I, Wendy G. Adkins, do hereby certify that a copy of the foregoing **“MOTION TO STAY DISCOVERY PENDING RESOLUTION OF DISPOSITIVE MOTIONS BY DEFENDANTS WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS, C. PETER MAGRATH, JAMES P. CLEMENTS, and E. JANE MARTIN”** was served on counsel of record electronically, or via U.S. Mail, postage pre-paid, as appropriate, this the 29th day of July, 2011.

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